

Fidelity & Guaranty Insurance (“Fidelity”), Dillards’ workers compensation insurance carrier, asks the Utah Labor Commission to reconsider its prior decision affirming the Administrative Law Judge's entry of default against Fidelity with respect to T. W.’s claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

The Labor Commission exercises jurisdiction over this matter pursuant to Utah Code Ann. §63-46b-13.

ISSUES PRESENTED

Fidelity argues it should be relieved of default because the Adjudication Division did not comply with all requirements of subsection (3) of §63-46b-3 of the Utah Administrative Procedures Act (“UAPA”).

FINDINGS OF FACT

_____ Fidelity does not challenge the findings of fact set forth in the Commission’s prior decision. However, the following additional facts are material to the issue raised in Fidelity’s request for reconsideration.

Fidelity’s motion for review to the Commission argued that default should be set aside because the Adjudication Division had not complied with subsection 2 of §63-46b-3. Ms. W.’s response to Fidelity’s motion for review pointed out that subsection 2 did not apply to this proceeding. Only then, in its reply to Ms. W.’s response, did Fidelity raised the new argument that the Adjudication Division had not complied with subsection 3 of §63-46b-3.

DISCUSSION

Section 63-46b-12 of UAPA provides that a motion for review “shall” state the grounds for review. Thus, it was Fidelity’s obligation in filing its motion for review to raise all the issues on which review is sought. This allows an orderly response from opposing parties and a full discussion of the issues in dispute.

In this case, Fidelity’s motion for review did not raise the application of subsection (3) as an issue. No reason is given for this failure. Instead, the issue was raised in Fidelity’s reply, giving Ms. W. no opportunity to respond. The Commission is concerned that, if parties are permitted to present their arguments one at a time, responding parties will be prejudiced and an unreasonable burden will be placed on the Commission. More directly to the point, such a practice would violate the requirement of §63-46b-12 of UAPA that the grounds for review be stated in the motion for review. In light of the foregoing, the Commission concludes that Fidelity has failed to properly raise its subsection (3) argument.

But even if the Commission were to consider Fidelity's subsection (3) argument on its merits, the Commission would conclude that Fidelity is not entitled to relief from default. While the Adjudication Division's request for answer was defective in some technical respects, Fidelity has not shown that there is any connection between such defects and Fidelity's failure to file a timely answer.

In summary, Fidelity has failed to provide a reasonable explanation of its failure to file a timely answer. The Commission therefore reaffirms its prior decision upholding the ALJ's entry of default against Fidelity.

ORDER

The Commission denies Fidelity's request for reconsideration, reaffirms its prior decision, and remands this matter to the ALJ for additional proceedings necessary to complete the adjudication of Ms. W.'s claim. It is so ordered.

Dated this 30th day of April, 2002.

R. Lee Ellertson, Commissioner